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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

## **PLAINTIFF'S PETITION**

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Plaintiff, Adriana Herrera Ramirez (“Plaintiff”) files this Original Petition complaining of Defendant, Midland Credit Management, Inc. for a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”) and in support thereof would show the Court as follows:

#### **JURISDICTION AND VENUE**

1. Plaintiff brings this action under the FDCPA, a federal statute, thereby invoking jurisdiction  
2 pursuant to 28 U.S.C. §1331. Plaintiff also asserts supplemental jurisdiction under 28 U.S.C.  
3 §1337.

4. Venue is proper in this District under 28 U.S.C. 1391(b) because a substantial part of the  
5 events or omissions giving rise to the claim occurred in this judicial district and/or because the  
6 Defendant is subject to personal jurisdiction in this district.

7

8 **PARTIES**

9. Plaintiff is a natural person, who at all relevant times has resided in Eureka, California.

10. Defendant Midland Credit Management, Inc (“MCM” or “Defendant”) is a corporation  
11 doing business in the State of California, with its corporate address as 2365 Northside Drive, Suite  
12 300, San Diego, California 92108, and is “debt collector” as the phrase is defined and applied  
13 under 15 U.S.C. §1692(a) of the FDCPA in that they regularly attempt to collect on debts primarily  
14 incurred for personal, family or household purposes.

15. Defendant Capital One Bank USA, N.A. (“Capital One”) is a business entity that regularly  
16 conducts business in California and has its corporate headquarters at 1680 Capital One Drive,  
17 McLean, VA 22102. Capital One regularly and in the ordinary course of business furnishes  
18 information to various consumer reporting agencies regarding Capital One’s transactions with  
19 consumers and is a “furnisher” of information as contemplated by FCRA § 1681s-2(a) & (b).

20

21

22 **FACTUAL STATEMENT**

23. On a date better known by Defendants, Plaintiff received a call from Capital One N.A. to  
24 collect on an outstanding debt.

7. Plaintiff informed Capital One that this debt did not belong to her, at which time a representative of Capital One N.A. verified that information in its system did not line up with Plaintiffs identifying information.

8. Plaintiff Adriana Herrera Ramirez never had a Walmart or Neiman Marcus account with Capital One Bank, N.A.

9. Despite this, Capital One then sold the alleged debt to MCM to continue its collection efforts.

10. With its sale capital one made material misrepresentations concerning the character amount and legal status of the debt.

11. Thereafter defendant MCM began attempting to collect on the debt. Plaintiff informed MCM that the debt was not hers, but MCM proceeded to filing a lawsuit against her nonetheless.

12. With this lawsuit defendant MCM has made false and deceptive statements concerning plaintiffs alleged debt.

**COUNT I**  
**VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**  
**15 U.S.C. § 1692 et seq. BY MCM**

13. Plaintiff repeats, re-alleges, and re-asserts the allegations contained in the above paragraphs and incorporates them as if specifically set forth at length herein.

14. MCM's actions are in violation of 15 U.S.C. § 1692e, e(2), e(10).

<sup>15</sup> MCM's actions also violate 15 U.S.C. § 1692f.

16. Plaintiff has suffered emotional injuries including fear, anxiety, and sleep issues as a result of the erroneous lawsuit filed against her.

**COUNT III**  
**VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES  
ACT, CALIFORNIA CIVIL CODE § 1788.17 et seq.**  
**BY MCM**

1 17. Plaintiff repeats, re-alleges, and reincorporates the allegations contained in the paragraphs  
2 above and incorporates them as if set forth specifically herein.

3 18. The Rosenthal Act, California Civil Code § 1788.17, requires every creditor attempting to  
4 collect a consumer debt to comply with the provisions of “Sections 1692b to 1692j, inclusive, of,  
5 and shall be subject to the remedies in Section 1692k of Title 15 of the United States Code.”

6 19. Defendant MCM’s collection attempts of the alleged debt violate 15 U.S.C. §§ 1692e, e(2),  
7 and e(10), and thereby also violate the Rosenthal Act, California Civil Code §§ 1788.17, as well  
8 as any other applicable provisions.

9 20. MCM’s actions were knowing and willful—MCM knew the debt owed was not Plaintiff’s  
10 but continued to collect nonetheless.

11 21. As a result of MCM’s wrongful collection practices, Plaintiff has been damaged and is  
12 entitled to relief.

14 **COUNT IV**  
15 **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES**  
16 **ACT, CALIFORNIA CIVIL CODE § 1788.17*et seq.***  
17 **BY CAPITAL ONE N.A.**

18 22. Plaintiff repeats, re-alleges, and reincorporates the allegations contained in the paragraphs  
19 above and incorporates them as if set forth specifically herein.

20 23. The Rosenthal Act, California Civil Code § 1788.17, requires every creditor attempting to  
21 collect a consumer debt to comply with the provisions of “Sections 1692b to 1692j, inclusive, of,  
22 and shall be subject to the remedies in Section 1692k of Title 15 of the United States Code.”

23 24. Defendant Capital One’s material misrepresentations to MCM violate 15 U.S.C. §§ 1692e,  
24 e(2), e(8), and e(10), and thereby also violate the Rosenthal Act, California Civil Code §§ 1788.17,  
25 as well as any other applicable provisions.

25. Capital One's actions were knowing and willful—Capital One knew the debt owed was not Plaintiff's.

26. As a result of Capital One's wrongful collection practices, Plaintiff has been damaged and  
is entitled to relief.

WHEREFORE, PLAINTIFF PRAYS that this court grant her judgment against Capital One and Midland Credit Management for statutory and actual damages, along with costs, interest, and attorney's fees.

**JURY TRIAL DEMAND**

27. Plaintiff demands a jury trial on all issues so triable.

Dated this 9<sup>th</sup> day of May 2022.

Respectfully Submitted,

/s/ *Robert Sibilia*

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